Federal Court  Cour fédérale

Date: 20230816

Docket: T-6-23

Citation: 2023 FC 1113

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 16, 2023

PRESENT: The Honourable Justice Roy

BETWEEN:

LUC BIBAUD

Applicant

and

BELL TECHNICAL SOLUTIONS INC.

Respondent

ORDER AND REASONS

[1] Bell Technical Solutions Inc. [BTS], the named respondent, has filed a two-part motion:

1. the motion seeks to have the named respondent removed from the style of cause as respondent; in BTS's view, the respondent should be the Attorney General of Canada pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106 [Rules]; and

2. after being removed from the style of cause, BTS would nevertheless like to intervene in the case, under section 109 of the Rules.

[2] The Attorney General of Canada disagrees with this request, as does Mr. Bibaud.

I. Introductory request

[3] The respondent, BTS, wished to supplement its motion record by submitting two documents. The first is the complaint form for violence and harassment in the workplace, which is the subject of this case. The second is the investigation report relating to the complaint, which is the impugned decision on judicial review. The investigation report was prepared in accordance with the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 [Regulations]; these Regulations were enacted under the *Canada Labour Code*, RSC 1985, c L-2.

[4] Mr. Bibaud and the Attorney General of Canada have not objected to these documents becoming part of the motion record, unless BTS is seeking to make the very merits of the application for judicial review incidental to this motion.

[5] It was agreed that this would not be the case. As for the two documents themselves, they are undoubtedly part of the relevant context. Their submission as part of the motion record was therefore authorized.

II. Facts

[6] Originally, this was an application for judicial review filed by Mr. Bibaud against a report made by an external investigator (at BTS) who had investigated a complaint of psychological violence allegedly committed by a BTS employee against the applicant, who is also a BTS employee.

[7] The application for judicial review was made pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [FC Act], and names BTS as respondent.

[8] It is not necessary to set out Mr. Bibaud's allegations in order to dispose of the motion. Nor is it necessary to deal at length with the reasons given by the external investigator in her handling of the complaint. At this stage, the only question is who the respondent should be. If BTS should not be the respondent, we would then have to consider whether BTS should be named as an intervener.

III. Position of parties

[9] The legal syllogism presented by BTS is really quite simple.

[10] BTS claims to be a "tribunal" within the meaning of section 2 of the FC Act. If this is indeed the case, it could not be named as a respondent under paragraph 303(1)(a) of the Rules, which reads as follows:

303(1) Subject to subsection (2), an applicant shall name as a respondent every person	303(1) Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur :
(a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or	a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;
. . .	. . .

[11] Relying on a decision of this Court in *Doyle v Canada (Attorney General)*, 2020 FC 259, summarily affirmed on appeal (*Doyle v Canada (Attorney General)*, 2022 FCA 56 [*Doyle*], at para 11), BTS argues that the qualities of the National Energy Board, which was considered in *Doyle*, apply to it, making it a tribunal.

[12] If BTS is excluded from the style of cause, in the event that the Court agrees with its arguments, BTS nevertheless seeks to remain involved in the litigation, since it clearly has a direct interest: the applicant was an employee when he complained of the psychological harassment he allegedly suffered at the hands of another BTS employee. The respondent relies on the Federal Court of Appeal's case law and suggests that it would file an affidavit setting out the relevant facts and documents in its intervener's record. This record would also include a memorandum of fact and law, the content of which would remain to be specified.

[13] With commendable candour, BTS agrees that it [TRANSLATION] "has a significant stake in the outcome of this application for judicial review" (written submissions, at para 33). It is not particularly clear, then, why BTS would want to be removed from the role of respondent, only to rejoin the fray as an intervener.

[14] Mr. Bibaud notes that the respondent is a private company, which was obviously not the case of the National Energy Board in *Doyle*. This distinguishes the situation in *Doyle* from that before the Court. He also points out that he is not convinced that BTS will submit all the documents in its possession if it is only an intervener.

[15] The Attorney General of Canada resists the motion on the grounds that BTS is not a tribunal and that BTS is the party directly affected by the judicial review applicant. Thus, the *Doyle* decision does not apply since the National Energy Board was exercising powers conferred by statute; this is clearly not the case here since BTS is subject to federal regulations as an employer subject to those regulations. At issue is an investigation conducted by an external investigator into a labour relations issue, a dispute described as private. By the very terms of paragraph 303(1)(a) of the Rules, BTS, being the person affected by the order sought, is the appropriate named respondent.

[16] In reply, BTS notes that the external investigator was employed under sections 25 to 27 of the Regulations. If I understand correctly, it is arguing that if it is true that BTS is not a tribunal because it is a private company not created by by or under an Act of Parliament, then the external investigator is not a tribunal either.

[17] According to this argument, BTS is therefore claiming, there can be no judicial review before the Court. BTS has announced that it may wish to raise such an issue on a future motion.

IV. Analysis

[18] The main question before the Court is whether BTS is the appropriate respondent to an application for judicial review. Whether or not BTS should intervene is an ancillary question.

[19] I'll start by explaining how a report is arrived at under the Regulations. In my opinion, the solution to the problem suggested by BTS begins with an understanding of what the dispute consists of, and therefore a better understanding of the legal regime created by the Regulations and the role played by the person who signed the report that is the subject of the application for judicial review.

A. *Current regime*

[20] The Regulations, to which Mr. Bibaud refers, were adopted under the *Canada Labour Code*. The regulatory authority gives employees who allege that they have been the object of an occurrence of harassment or violence in the work place the right to provide an employer with notice of such an occurrence (section 15 of the Regulations). Reasonable efforts must be made by both the employer and the employee to resolve an occurrence for which notice is provided under section 15. Conciliation is also possible (section 24). If the occurrence is not resolved, an investigation of it must be carried out if the employee requests it (section 25). This is not optional. The selection of investigator is governed by subsection 27(1) of the Regulations, which reads as follows:

27 (1) Subject to subsection (2), an employer or designated recipient must select one of	27(1) L'employeur ou le destinataire désigné choisit l'une des personnes ci-après pour agir comme enquêteur :

the following persons to act as the investigator:	
(a) in the case where the employer and the applicable partner have jointly developed or identified a list of persons who may act as an investigator, a person from that list; and	a) dans le cas où l'employeur et le partenaire concerné ont élaboré ou sélectionné conjointement une liste de personnes qui pourraient agir comme enquêteur, une personne de cette liste;
(b) in any other case,	b) dans les autres cas :
(i) a person that is agreed to by the employer or designated recipient, the principal party and the responding party, or	(i) lorsque l'employeur ou le destinataire désigné, la partie principale et la partie intimée s'entendent à cet égard, la personne qu'ils choisissent,
(ii) if there is no agreement within 60 days after the day on which the notice is provided under section 26, a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the knowledge, training and experience referred to in subsection 28(1).	(ii) lorsqu'ils ne s'entendent pas dans les soixante jours suivant la date à laquelle l'avis est donné en application de l'article 26, une personne parmi celles que le Centre canadien d'hygiène et de sécurité au travail a désignées comme ayant les connaissances, la formation et l'expérience visées au paragraphe 28(1).

[21] In our case, paragraph 27(1)(b)(ii) applied. Once the investigation has been completed, the investigator's report will include a general description of the occurrence, conclusions and recommendations to eliminate or minimize the risk of a similar occurrence (section 30). Implementation of the recommendations is provided for in section 31. It is important to note that there is no discretion as to whether or not an investigation should be carried out. The employer sees to it that the investigation is carried out in accordance with the Regulations. Indeed, the Regulations require it. It could even be said that the employer's role in selecting an investigator

is circumscribed by the Regulations. Either a joint list has been developed and the investigator is selected from this list that suits everyone, or such a list does not exist. In that case, either a person is chosen jointly, or the employer may only select from a list compiled by an independent body, which will determine the qualifications required by investigators to be included on this list. I'll come back to this later.

[22] As we can see, what is being challenged before the Court is not the appointment of the investigator, but rather the investigator's report, in respect of which BTS has no decision-making role to play. It merely appointed an investigator from a list compiled by the Canadian Centre for Occupational Health and Safety; this investigator was independent of BTS. This raises the question of how the BTS can be a tribunal, given that the contents of the investigation report are not its own, and that its only role under federal regulations is to appoint an investigator from a list over which the employer has no control.

[23] The FC Act provides a definition of "federal board, commission or other tribunal". I have reproduced it, underlining what I believe to be the relevant passages:

federal board, commission or other tribunal means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made under a prerogative of the Crown, other than the Tax Court of Canada or any of its judges or associate judges, any such body constituted or	***office fédéral*** Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges et juges adjoints, d'un organisme constitué sous le régime d'une loi

established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867; (*office fédéral*)	provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*. (*federal board, commission or other tribunal*)

To qualify as a tribunal, BTS must therefore be a "body" or person purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament ("prévus par une loi fédérale" in French).

B. *Is BTS a tribunal*

[24] That said, with due respect, I was not persuaded that BTS is a tribunal by virtue of the role it plays under the Regulations and more specifically in the application for judicial review under consideration.

[25] The model created by the *Canada Labour Code* and the Regulations has its own particularities. To a certain extent, it seeks to ensure that issues relating to harassment and violence in the work place are dealt with and resolved within companies. Thus, the Regulations stipulate that the employer and the "applicable partner" (defined in the Regulations as "the policy committee or, if there is no policy committee, . . . the work place committee or the health and safety representative", subsection 1(2)), must jointly identify risk factors and develop preventive measures on an ongoing basis (sections 5 to 9). The Regulations also order the employer and the applicable partner to develop a harassment and violence prevention policy including specific elements. In that sense, the Regulations are prescriptive (section 10).

[26] In the same vein, the Regulations require that emergency procedures be developed (section 11), that training be provided (section 12) and that support measures be made available to employees (section 13).

[27] An occurrence of harassment or violence in the work place may nevertheless require a resolution process. Thus, as mentioned above, an employee who claims to be the object of an occurrence can provide notice under section 15, triggering the process.

[28] The process for responding to a notice of occurrence is detailed in sections 20 to 22. But even the Regulations always seek agreement between the employer and the employee claiming to be a victim. The interested parties are obliged to make “every reasonable effort to resolve an occurrence for which notice is provided” (section 23). Conciliation is possible under section 24.

[29] However, if the occurrence cannot be resolved despite reasonable efforts or conciliation, an investigation process is initiated in accordance with sections 25 to 30 of the Regulations.

[30] In this case, this is what happened to Mr. Bibaud and BTS. An investigation was held and a report completed, and the report obviously does not satisfy Mr. Bibaud, who wants to challenge it before our Court.

[31] The investigator possesses certain qualities required by the Regulations. The investigator must be a person from among those whom the Canadian Centre for Occupational Health and Safety has identified as having the knowledge, training and experience referred to in

subsection 28(1). This subsection stipulates that the investigator must be trained in investigative techniques, and have knowledge in addition to training and experience that are relevant to harassment and violence in the work place. The person must have knowledge of Part II of the *Canada Labour Code*, the *Canadian Human Rights Act* and any other relevant legislation. The Centre was created as a national institute by the *Canadian Centre for Occupational Health and Safety Act*, RSC 1985, c C-13. It is a government agency.

[32] What does the investigator do? The investigator will produce a report containing a description of the occurrence, the conclusions reached, including the circumstances in the work place that contributed to the occurrence, and recommendations to eliminate or minimize the risk of a similar occurrence (section 30).

[33] To further emphasize the expected collaboration, section 31, which deals with the implementation of recommendations made by the investigator, addresses the implementation of all recommendations the employer and the work place committee or health and safety representative have jointly determined to implement. Section 2 states that, in the absence of an agreement, the employer's decision prevails.

[34] In this case, the question of implementing the investigator's recommendations did not arise, since she concluded that [TRANSLATION] "[t]he complaint of violence and harassment submitted by Luc Bibaud is unfounded". Nevertheless, at the hearing, the Court asked what would happen if the employer chose to reject the recommendations made. In further written submissions dated June 1, 2023, BTS explained that it appeared that a remedy would then be

available under the *Canada Labour Code* in certain circumstances. The Attorney General, for his part, stated in a letter dated July 6 that it would be premature to comment on the interpretation of the system put in place by the *Canada Labour Code* and the Regulations. He merely reiterated that, as an employer, BTS was not a tribunal and that BTS was validly named as the respondent.

[35] I also came to the conclusion that it was not necessary to dispose of the hypothetical question of what can be done in a case where recommendations are not implemented. This is not at issue here. A reviewing court should not rule on an issue if it is not necessary to resolve the dispute as presented. Since there are no recommendations at issue, it is better to wait until a specific case arises before examining it.

[36] Rather, the point is to demonstrate that the legislative and regulatory regime in place has a precise framework set out in the legislation, in which the employer plays a specific but limited role.

[37] BTS states that it referred Mr. Bibaud's complaint to Ms. Marceau, the external investigator. This is not inaccurate per se, but it is imprecise. Ms. Marceau is one of the persons recognized by a federal agency, the Canadian Centre for Occupational Health and Safety, as having knowledge, training and experience that are relevant to issues of harassment and violence in the work place under sections 27 and 28 of the Regulations. In fact, the investigator refers to herself as an [TRANSLATION] "external investigator," with clients in the education, public and municipal sectors (investigation report, P-2). She is independent of the employer. Contrary to what BTS claims in its reply to the Attorney General's memorandum of fact and law, BTS and

Ms. Marceau are not one and the same. The law provides that they are clearly distinct, which might not be the case if the employer and the responding party had agreed on the selected investigator (subparagraph 27(1)(b)(i) and paragraph 28(2)(b) of the Regulations). The report at issue here seems to me to clearly be a report prepared by a person who is not the employer and who deals at arm's length with the employer. Indeed, it is hard to see how it could be otherwise, even if the parties were unable to agree on a person to act as investigator.

C. *Case law cited by BTS*

[38] Essentially, BTS is seeking support from this Court's decision in *Doyle v Canada (Attorney General)*, 2020 FC 259. In my opinion, this decision does not constitute a precedent that should be followed.

[39] Mr. Doyle was an employee of the National Energy Board (now the Canada Energy Regulator), who complained of violence in his work place, alleging disrespectful behaviour towards him. Although the decision is unclear, one understands that an investigation was held under the *Canada Occupational Health and Safety Regulations*, SOR/86-304; it is not clear what the mechanism under the Regulations was. What is clearer is that an investigation had led to the conclusion that while disrespectful behavior had taken place, it did not constitute work place violence.

[40] Not satisfied, Mr. Doyle, who represented himself, sought judicial review of the investigation report because it breached procedural fairness. The Attorney General, who was the respondent, agreed. The parties disagreed exclusively about the remedy. Mr. Doyle would have

liked our Court to substitute its own decision for the administrative decision maker's. In contrast, the Attorney General argued that the only appropriate remedy was to return the matter "to be dealt with in accordance with subsection 20.9(2) of the Regulations whereby the employer tries to resolve the complaint with the employee" (para 12).

[41] The issue to be determined by this Court was therefore "whether the Court [could] accede to Mr. Doyle's request to make a determination on the merits of the Complaint based on the evidence before the [competent person]" (para 31). The issue was not whether the application for judicial review should be allowed, the respondent having conceded that it should, let alone who constituted the tribunal whose decision was subject to judicial review under section 18.1 of the FC Act. The question was simply what the remedy should be. According to this Court's decision, the legislative scheme had vested in the employer, the National Energy Board, not the Court, the authority to decide whether the person had been a victim of work place violence (para 33). The case therefore had to be set aside, and the Court would not deal with the merits. A second reason given was that the Federal Court's remedial powers were limited. *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206, confirms that the reviewing court's power to arrive at a particular decision is reserved for cases where there is only one reasonable conclusion, making referral to the administrative decision maker useless. This was not the case here. I would add that since *Doyle*, the Supreme Court of Canada has commented on remedial discretion in its landmark *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], at paragraphs 139 to 142. The general rule continues to be to remit the matter to the administrative decision maker, limiting discretion to the reviewing court "where it

becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose" (*Vavilov* at para 142).

[42] This was the *ratio decidendi* in *Doyle*. In *Doyle*, the Court, of its own initiative, asked whether the National Energy Board had been correctly named as respondent. The National Energy Board agreed with its removal as respondent, but Mr. Doyle expressed "concern", submitting that neither the National Energy Board nor the competent person who had investigated the matter were a tribunal. Mr. Doyle had a particular reason in mind for making such an argument.

[43] Paragraph 19 of the decision states:

> [19] Mr. Doyle's concern of whether there is a tribunal to which the Complaint may be returned is linked with his belief that the standard of review of the Report is correctness. As I understand Mr. Doyle's analysis, if there is no established tribunal - as he argues is the case - and the standard of review is correctness, then it is within the power of the Court to make the determination that the [competent person] should have made based on the evidence that was before the [competent person].
>
> [Emphasis added.]

The argument about the status of the National Energy Board and the investigator not being a tribunal under the FC Act was, of course, a vain attempt to prevent the case being referred back to the administrative tribunal. But this was a pointless argument that, in reality, was going nowhere. Of course, if Mr. Doyle had been right, this Court would probably not even have had jurisdiction to hear the judicial review and decide on the breach of procedural fairness. Mr. Doyle was shooting himself in the foot. The motivation for his "concern" was obviously ill-founded.

[44] In the context of this concern that the National Energy Board was not a tribunal, giving rise to the argument that the Court had to deal with the merits of the administrative decision, this Court therefore briefly considered the definition of “federal board, commission or other tribunal” to satisfy itself that the Board was a “tribunal” exercising powers conferred by or under an Act of Parliament. The Court noted that both the Board and its successor, the Canada Energy Regulator, were created by an Act of Parliament. Since the Board was a tribunal, as argued by the Court of its own initiative and undisputed by the parties, it had to be removed from the style of cause. Clearly, this did not alter the issue that, once the respondent had agreed that there had been a breach of procedural fairness, the Court should have substituted itself for the decision maker.

[45] Essentially, all Mr. Doyle wanted was for the Federal Court to consider the merits of his complaint, to avoid having to return before the administrative decision maker, which would then have to respect the principles of procedural fairness.

[46] This was the issue addressed by the Federal Court of Appeal (2022 FCA 56). In a short decision, the Court of Appeal confirmed that the type of remedy sought by Mr. Doyle was not appropriate: if the judicial review of an administrative decision reveals a reviewable error, the Court must order the matter to be referred back to the administrative decision maker (para 8), unless the case qualifies for some kind of exception.

[47] The Court of Appeal also summarily rejected Mr. Doyle’s claim that the Federal Court was biased because it questioned his position during the hearing to test the quality of his submissions. Finally, and just as summarily, the Court of Appeal refused to reverse the decision

to change the style of cause, which had been amended by this Court. Rather tersely, the Court of Appeal simply stated that, in amending the style of cause, "the Federal Court acted properly. We assure the appellant that this technical amendment did not affect the merits of his case in the Federal Court. It also does not affect the merits of his case in this Court" (para 11).

[48] In my opinion, *Doyle* is of little use. First of all, the legislative scheme on which the decision was based came from regulations that are not involved. The Court's decision is not explicit in this regard. Since it was agreed that procedural fairness had been breached, there was no need to say more. As the Court of Appeal said in its decision on appeal, this was merely an incidental question, with no bearing on the real issue.

[49] More significantly, the National Energy Board is quite different in nature from BTS: it exists by virtue of a an Act of Parliament that created it, as the Court noted in *Doyle*. At the very least, the Board participates in the federal state, where it plays the role of adjudicator, a role governed by public law. It is not clear to me that an organization such as the National Energy Board is a tribunal when questions of internal governance arise. But for our purposes it's not necessary to venture into this territory. That said, I don't think it can be suggested that *Doyle* constitutes a precedent that affects the case before the Court.

D. *Case law on definition of "federal board, commission or tribunal"*

[50] BTS is not a tribunal. It do not see it as having the fundamental qualities that this notion implies. The Attorney General insists that there is no comparison between the National Energy Board, an organization created by federal legislation, and BTS, an organization of a completely

different order: BTS is a private company. This is a significant difference. But there's more. The case law of the Federal Court of Appeal is consistent as to what is necessary for a body or a person to be a tribunal. *Oceanex Inc v Canada (Transport)*, 2019 FCA 250 [*Oceanex*], described the two-step analysis for determining whether an organization is a federal board. commission or other tribunal set out in *Anisman v Canada (Border Services Agency)*, 2010 FCA 52 [*Anisman*], at paragraphs 29 and 30:

> [29] The operative words of the s. 2 definition of "federal board, commission or other tribunal" state that such a body or person has, exercises or purports to exercise jurisdiction or powers "conferred by or under an Act of Parliament or by or under an Order made pursuant to a prerogative of the Crown…". Thus, a two-step enquiry must be made in order to determine whether a body or person is a "federal board, commission or other tribunal". First, it must be determined what jurisdiction or power the body or person seeks to exercise. Second, it must be determined what is the source or the origin of the jurisdiction or power which the body or person seeks to exercise.
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> [30] In *Judicial Review of Administrative Action in Canada*, Vol. 1, looseleaf (Toronto: Canvasback Publishing, 1998) at para. 2:4310, the learned authors, D.J.M. Brown and J.M. Evans, state that in determining whether a body or person is a "federal board, commission or other tribunal", one must look at "the source of a tribunal's authority". They write as follows:
>
> > In the result, the *source* of a tribunal's authority, and not the *nature* of either the power exercised or the body exercising it, is the primary determinant of whether it falls in the definition. The test is simply whether the body is empowered by or under federal legislation or by an order made pursuant to a prerogative power of the federal Crown. […]

[51] The same elements are repeated in *Canadian Judicial Council v Girouard*, 2019 FCA 30; [2019] 3 FCR 503. In my view, BTS had no authority over the report that is the subject of judicial review. Indeed, as a review of the Regulations will have revealed, BTS decided nothing. At best, the company, which is subject to the *Canada Labour Code*, governs some of its labour

law-related activities. With regard to the prevention of harassment and violence in the work place, if neither an agreement between the parties or conciliation fails to produce a resolution, the matter must go to an investigator by operation of the Regulations. The employer selects the investigator, but, in our case, only from a list generated by a government agency, the Canadian Centre for Occupational Health and Safety. The investigator will produce a report outlining his or her conclusions related to the circumstances that contributed to the occurrence under investigation, and recommendations to eliminate or minimize the risk of a similar occurrence. The employer does not have a decision-making role under the Regulations as they apply in this case.

[52] In *Air Canada v Toronto Port Authority*, 2011 FCA 347, [2013] 3 FCR 606, the Court of Appeal refused to limit the scope of applications for judicial review to just decisions and orders, as paragraphs 18.1(3)(b) and 18.1(4)(c) of the *Federal Courts Act* seem to provide for. These paragraphs read as follows:

(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
. . .	. . .
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.
(4) The Federal Court may grant relief under subsection	(4) Les mesures prévues au paragraphe (3) sont prises si la

(3) if it is satisfied that the federal board, commission or other tribunal	Cour fédérale est convaincue que l'office fédéral, selon le cas :
. . .	. . .
(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;	c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
. . .	. . .

[53] Rather, "any matter in respect of which a remedy may be available under section 18" (*Air Canada* at para 24) falls within the scope of the remedy. But there still has to be a decision or an order under paragraph 18.1(4)(c), or any act in respect of which a remedy may be available.

[54] Mr. Bibaud's application for judicial review does not concern a BTS decision or order, or an act in respect of which a public law remedy may be available. The application for judicial review filed under section 18.1 concerns the report prepared by an external investigator selected from a list created by the Canadian Centre for Occupational Health and Safety. The investigation report was produced under section 30 of the Regulations following an investigation that must be carried out according the Regulations. The outcome sought on judicial review is clear and only concerns the investigation report. It has nothing to do with BTS. The application for judicial review states:

> [TRANSLATION]
>
> **The applicant makes application for**:
>
> To declare null and void the investigation, the investigation report and its conclusion issued by the Investigator on November 17, 2022, and to render the judgment that should have been rendered. Refer the complaint submitted by the applicant to a different external investigator.

[55] *Oceanex* noted the words of the Supreme Court in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 (CanLII), [2018] 1 SCR 750 [*Highwood*], a case in which judicial review was sought against a decision of this congregation. Two conditions must be met for judicial review to be available: "where there is an exercise of state authority and where that exercise is of a sufficiently public character" (*Highwood* at para 14). In our case, if state authority was exercised, it was certainly not exercised by BTS, since the investigation required by the Regulations was conducted by an external investigator. This investigator exercised the authority conferred by the Regulations. The authority that the applicant wishes to contest is that of the investigator, a person other than BTS. The only role the latter played was to select the investigator from a list it did not compile.

[56] BTS was not a tribunal in the impugned decision in this case. BTS was not exercising jurisdiction or powers conferred by or under an Act of Parliament with respect to what is being challenged by Mr. Bibaud, namely the external investigator's report. To return to the *Anisman* test, the nature of the jurisdiction and power is the investigation conducted by someone other than BTS.

[57] Thus, both the decision whose validity is being challenged and the status of the person who produced it out run counter to BTS's claim that it is a tribunal, thereby rendering it a person who cannot be the subject of the application for judicial review under section 303 of the Rules. BTS is not the tribunal that issued the impugned decision.

V. Incidental issues

[58] I would add that subsection 303(3) of the Rules could also have been a determinative obstacle to BTS's claims insofar as the Attorney General would have to have been named as a respondent instead of BTS (who is the person directly affected by the order being sought). I reproduce subsections 303(2) and (3):

(2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.	(2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.
(3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.	(3) La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplacement une autre personne ou entité, y compris l'office fédéral visé par la demande.

[59] If BTS were a "tribunal", it is far from clear that the Attorney General could act in the present dispute. As section 303(3) expressly provides, the tribunal could even be named if a motion were filed by the Attorney General. At the motion hearing, counsel for the Attorney General suggested that the Attorney General is unable to act in a case such as this, where there is no government connection to the litigation or the parties. We are a far cry away from a case where a government agency might have a direct, or even indirect, interest in a given case, and

where the Attorney General would be acting for a department or other government agency. In fact, the *Department of Justice Act*, RSC 1985, c J-2, provides that the Attorney General "shall have the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada" (subsection 5(d)). His mandate is limited. Simply put, the Attorney General does not act for private parties.

[60] Finally, given the conclusion reached by the Court on the main argument that BTS is a tribunal for the purposes of the application for judicial review, it is not necessary to deal with the ancillary proposition that BTS could intervene in the dispute under section 109 of the Rules.

[61] For the sake of completeness, it may be useful to recall that even bodies created by legislation are subject to laws of general application, including those dealing with matters of corporate governance, such as renting premises and hiring staff (*Highwood*, at para 14). Such bodies are not tribunals when it comes to matters of corporate governance and therefore not sufficiently public in nature.

[62] This decision merely disposes of BTS's claim that it is not a tribunal in the context of the application for judicial review of the investigation report of an investigator selected under the Regulations. It must be understood that this was the only question to be answered. Nothing in the reasons for judgment addresses the soundness of the application or its merits.

VI. Conclusion

[63] The motion seeking an order that Bell Technical Solutions Inc. be removed from the style of cause as respondent and that the Attorney General of Canada be substituted as respondent is dismissed. It is not necessary to determine whether Bell Technical Solutions Inc. should be granted intervener status.

[64] The parties have not requested costs and none have been awarded.

ORDER in T-6-23

THE COURT ORDERS as follows:

1. Bell Technical Solutions Inc.'s motion for an order to remove it as respondent in the style of cause is dismissed.

2. No costs are awarded.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-6-23
STYLE OF CAUSE:	LUC BIBAUD v BELL TECHNICAL SOLUTIONS INC.
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	MAY 30, 2023; ADDITIONAL MEMORANDA ON JUNE 1 AND JUNE 6, 2023
ORDER AND REASONS:	ROY J
DATED:	AUGUST 16, 2023

APPEARANCES:

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Maryse Tremblay	FOR THE RESPONDENT
Maude Normand	FOR THE ATTORNEY GENERAL OF CANADA

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